App. F. IX-4

Previous References 1928-29 (law) **File No.** 19-28

Serial Nos. 1-15

Later References

8 D (14)

General and Revenue Secretariat.

Serial Nos. ~~Font.~~ Face.

Part B for March 1929

SUBJECT

Notice on behalf of Mr Venkata Giriyappa Khandhar
of Bellary, Dodda Gallappa Lakshmi Claiming
Rs 112200/- & interest thereon.

GENERAL AND REVENUE SECRETARIAT.

NOTES.

File Nc

FILE HEADING.

Notice dated 10-8-1928 from advocate Mr. M. Narayanarao on behalf of Venkatasiadha, Shanbhogue of Tubegere, Doddaballapur Taluq.

FROM

Mr M. Narayanarao

No. nil Dated 10/8/28 Received 11-8-28

Diary No. 669	Enclos.	Spare copies	Serial No.

BRIEF ABSTRACT OF LETTER.

Claims payment [redacted] 2000/- principal + Rs 1534-8-0 interest till 15-8-28 due to his client on a mortgage of Schedule lands hypothecated to him by Excise Contractor Bnagadha & others & which lands have been purchased by D.C. Kolar at a Revenue sale held for arrears of Excise Dues.

NOTES AND ORDERS.

This is a notice under Sec 80 C.P.C issued on behalf of Mr. Venkatagurappa, Shanbhogue of Tubegere, claiming payment of Rs 3734-8-0, being the principal and interest alleged to be due on a hypothecation bond executed by Venkatasiadha on 15-9-24 to Gunaiya Kuddu

of the price which is not determined until the sale effected . The agents are not debited with any price until the oil was actually sold. The [illegible] profit due to market fluctuations goes to the Government and the agents are not entitled to anything over and above commission and expenses. The essential feature of the legal status of an agent is his authority to bind the principal in respect of the agent's dealings with third parties. There can be no doubt that the Government are bound so far as the buyer is concerned with the price fixed with them by the agent. For the reasons discussed at length above there can be no doubt the legal relationship created between Government and the Ks enflour Products Co. by the - - agreement was one of principal and agent.

It has been contended on the accused's statement that there was never the entrustment of the sale-proceeds to the agent company. "According to the terms of the agreement, the question of 'trust' does not arise between the contracting parties". On the other hand I am inclined to hold that the express terms of the agreement presumes such a contention. Clause 6 of the agreement runs thus:-

"All sale-proceeds less commission and other expenses authorised by Government, received on behalf of the Government, should be remitted to the account of the Government with Messrs. Coutts & Co., in London without any delay and not less than once a week" There is an express understanding here that 'all sale-proceeds' are to be 'received on behalf of the Government' for being remitted to the account of the Government without delay. Here there is an express acknowledgment of a trust and when there is an express acknowledgment of a trust the question arises as to whether the party who is permitted to remit moneys on an express acknowledgment of trust can be heard to say after receiving the moneys that there was no trust. Section 115 of the Evidence Act runs thus:-

"When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act on such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing." It is a clear principle of law that a trustee may not set up any title adverse to that of the Cestui-que-trust which he (trustee) may himself have or even on behalf of third parties. I am therefore inclined to hold that in the face of an express undertaking to hold the sale-proceeds in trust for the Government in clause 6 of the agreement, the accused who is a representative of one

General and Revenue Secretariat.

File No. 19 of 1928.

Serial No.

Chikkanagappa and B. nagappa
Sandy Hanumantappa, hypothecating the
two items of garden land in Tubagere, wn
have been purchased by the Deputy Comr
Kolar, at a sale held for arrears of Excise.
If approved a report will be called for
from the Deputy Comr Kolare.
Dsp
14/8/28
pr. please put up draft
14/8

Draft put up
Dsp
15/8/28
(Secy)

2 To The Dy Comr Kolar
No 10188 D 20.8.28
Calls for a report

Sue
Mf
22/8/28

3. Letter no. 127 from D C. Kolar forwarding
copy of his letter to Excise Commissioner —
The copy sent does not give any information about the facts of the case —
If approved a further report will be called for from the Excise Comr.
Dsp
31/8/28

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

General and Revenue Secretariat. | Law File No. 19 of 1928.

Serial No.	
	Draft to Excise Comr Guntur Draf — L.R.) 1.9.28 Ans 1/9
4	To The Excise Comr NOP 1482 — dt 6.9.28 Called for a report
5.	From the Excise Comr No: A1 102-27 18-9-28. Stating the G.A. has been requested to furnish his opinion in the matter & also draw reply to Mr. M. Narayana Rao. The properties which are alleged to have been hypothecated to Mr. Narayana Rao's client were purchased by the D.C. Solar for arrears of Excise dues. It was however found that they were heavily incumbered. In O.S. 28 of 25-26 referred to in the P.O. which was filed brought before of the hypothecatees, a decree was obtained against the D.C. Solar. Now that another hypothecatee has served this notice it is reported that the G.A. who appeared in O.S. of 25-26, has been requested to give his opinion in the matter as also to send a draft reply. The same ~~may~~ is said to be awaited by the E.C.

WD 01714—GPB—30,000—18-4-28

General and Revenue Secretariat.

Law File No. 19 of 1928.

Serial No.	
	Draft to Excise Comr Dony L.R.) 2 1.9.28 4. Appd 1/9 appd 8 3.9 Dony.
4	To The Excise Commr NOP 1482 dt 6.9.28 Case for a report
5.	From the Excise Comr No: A1 102-27 dated 18-9-28. Stating the G.A. has been requested to furnish his opinion in the matter & also reply to Mr. M. Narayana Rao. The properties which are alleged to have been hypothecated to Mr. Narayana Rao's client were purchased by the D.C. Kolar for arrears of Exc dues. It was however found that they were encumbered. In O.S. 28 of 25.26 referred to in the P.O which was sent brought by one of the hypothecatees, a decree was obtained against the D.C. Kolar. Now that another hypothecatee has served this notice it is reported that the G.A. who appeared in O.S. of 25.26, has been requested to give his opinion in the matter as also to send a draft reply. The same ~~may~~ is said to be awaited by the E.C.

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

General and Revenue Secretariat. Law File No. 17 of 1927.

Serial No.

Draft of a letter to E.C to send a further report
before it for approval.

MM
21.9.28

Further report may be awaited

2
21/9

The file relating to this matter is referred
L.R for opinion - The Income Com^r has recommended
therein that the Govt's claim for the amount due
by Mr. Rapatha maybe dropped and that the
properties now in poss^n of govt be released
subject to the prior encumbrances -

MM
15/11/28

The opinion of the L.R given in ¶
of 27 is flagged C. no further action
called for in this file, & which with,
approved, be filed

MM
4/3/29
4/3

4/3

Con 19-87

To

The Chief Secretary

to the Government of Mysore,

Bangalore.

Sir,

Under instructions from Venkatagiriappa, son of Puttanna, Shanbhogue of Thubagere, Doddaballapur Taluq, I beg permission to inform you as follows:-

1. The two items of garden land hereinbelow described belonged to the family of Gummaiya, Kuppaiya, Chickkanagappa and B.Nagappa, all sons of Sendy Hanumanthappa of Picha Guntana Palya, Thubagere Mazare, Doddaballapur Taluq. The abovesaid persons were from the time of their ancestors Toddy Contractors, and for purposes connected with their contracts they incurred debts, amongst which were Rs.1,200/-, and Rs.1,000/- respectively due to Venkataramanappa and Alampally Adinarayanasetty.

2. In order to discharge the said debts the abovesaid four persons hypothecated the properties below mentioned in my client s favour under a registered deed dated 15-9-1924 undertaking to repay the loan within seven months after date of execution of the deed, in default to pay interest at 1½ % per mensem. The said debt remains

yet

yet unpaid and the encumbrance unredeemed.

3. In December 1924, my client understood that the Excise Department for arrears of Excise Revenue due to the Government from the family of the abovesaid persons attached all their properties including the items hypothecated to my client and got them sold and the items in question have been purchased by the Deputy Commissioner of Kolar in his official capacity who took the same into - his possession. The Deputy Commissioner of Kolar had notice of my client's claim and my client informed the Deputy Commissioner of Kolar again of the matter and though he received an answer stating that the matter was under consideration, nothing however has yet been done nor money due to my client paid.

4. A sum of Rs.2,200/- for principal and - Rs.1,534-8-0 towards interest, calculated up-to 15-8-1928 at the default rate mentioned in the - bond, in all a sum of Rs.3,734-8-0 is due to my - client. Inasmuch as a sugarcane crop of the value of Rs.150/-, (deducting the raiyats' share) which was standing on the land at the time of hypothecation was also hypothecated to my client and inasmuch as Government appropriated the same in April 1925 they are liable to make good the same.

5. I beg leave therefore to inform you that if within sixty days from receipt of this notice,

the

the matter is not settled and the aforesaid amount not paid to my client, my client will file a suit - against the Deputy Commissioner of Kolar who in his official capacity has purchased the property and is in possession thereof and against the other persons liable, for recovery with costs current interest, - and other reliefs which in the circumstances are - necessary ~~xixh~~ of the aforesaid sum of money from the hypothecated property and from Government.

I beg to remain,

Sir,

Your most obedient servant,

Bangalore,
10-8-1928.

Advocate. 10/8/28

Schedule.

1. Garden land bearing S.No.55 included in Thubagere, measuring 1-26 and assessed at Rs.11/-, and bounded on the East by land belonging to Hanumantharoyappa and others of Karnal, on the West by the land belonging to Gummaiya and others (executants), on the North by land belonging to Hanumantharoyappa, and on the South by land induded in the - boundaries of Karnal and belonging to Gummaiya and others.

2. The sugarcane crop of the value of Rs.400/- standing on the abovesaid land.

3.

3. Out of garden land ~~bearing~~ bearing S.No. 52 included in Thubagere, the land belonging to - Gummaiya and others, measuring 35 guntas and assessed at Rs.6-10-5 and bounded on the East by land belonging to Hurali Nagappa and Berappa, on the West by land belonging to Hanunantharoyappa and Venkatagiriappa, on the North by land out of the same S.No. belonging to Chickka Singregowda, and on the South by land out of the same Survey Number and belonging to Venkatagiriappa.

M. NARAYAN RAO, M.A.B.L.
ADVOCATE, BANGALORE CITY.

10/8/48

A. P. F. VI. 61

SUBJECT.....

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Section Law

File No. 19-28

Diary No. of letter replied to.....

Serial No. 7

No. P 1188 (2)

General and Revenue Secretariat

the *192*

To The Deputy Commissioner Kolar.

Date of issue 20/8/28

Signed by JWRS

Sir,

I am directed to forward herewith for an early report, a ~~the~~ copy of the notice dated 10th august 1928 issued to the Chief Secretary by M. M. Narayana Rao, Advocate on behalf of one Mr. Venkatagiriappa, Shanbhogue of Tubegere Doddaballapur Taluk, Claiming payment of a sum of Rs 3734-8-0 due on a registered hypothecation bond

List of enclosures.....

Copied by .....

Examined by .....

over

WD 0825—GPB—83,000—26-5-27

executed in his favour by
B. Nagappa and three others
whereby they ~~are~~ are said
to have mortgaged two items
of garden land alleged to
have been subsequently
purchased by you in a
sale held for recovery of
Excise ~~dues~~ revenue due
from the said Nagappa and

No. 127 Excise ...

Office of the Deputy Commissioner,
Excise Department, Kolar District
Dated, Kolar the 25th August 28.

From

Law 19-28. 3

The Deputy Commissioner,
Kolar District, Kolar.

To

The Secretary,
to the Government of His Highness the Maharaja of
Mysore, Law Department,
B A N G A L O R E.

Sir,

With reference to your letter No.P.1133(1) Law.19-28-2 dated the 20th instant re: notice issued by Mr. M.Narayana Rao, Advocate on behalf of one Mr. Venkataririappa, Shanbogue of Thubgere - Dodballapur Taluk, I have the honour to enclose herein a copy of my letter No.116 dated the 22nd instant addressed to the Excise Commissioner in the matter.

I have the honour to be,
Sir,
Your most obedient servant,

For Deputy Commissioner,
Kolar District.

I have the honour to forward herewith in original a letter dated 10th instant together with its enclosure received from Mr. M.Narayana Rao Advocate,on behalf of Mr.Venkatagiriappa, shanbogue of Thubgere village,Dodballapur Taluk. The notice itself explains the facts of the case fully.From the correspondence ending with your memo No.A1-102/27 dated 21-7-28 it seen that in the Civil Suit brought by Messrs.Naranappa and Ramiah against the Deputy Commissioner of Kolar and others a decree was passed in favour of the plaintiffs. The one under advertance is a second case that has cropped up. I request you to kindly consult the Government Advocate and send me a draft of the reply that has to be given to the Advocate. The favour of an early reply is requested.

'Copy'

For Deputy Commissioner,
Kolar District

A, P. F. VI. G1]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Date of issue.....6/9/28.....

Signed by.....

List of enclosures.....

Copied by .....

Examined by .....

Section Law

File No. 19-28

Serial No. 4

No. 1482(1)

General and Revenue Secretariat

( )

the 192

To The Excise Commissioner in Mysore, Bangalore.

Sir,

I am directed to forward for early report and reply herewith ~~the original~~ the original notice dated 10th August 1928 issued to the Chief Secretary by Mr M. Narayanarao, Advocate on behalf one Mr Venkatagiriappa Shanbhogue of Tubegere, claiming payment of a sum of Rs 3734-8-0 due on a registered hypothecation bond executed in his favour by B. Nagappa and three others whereby they

over

WD0325—GPB—80,000—26-5-27

are said to have mortgaged
two items of garden land
alleged to have been subsequen
purchased by ~~you and~~ the
Deputy Commissioner, Kolar,
in a sale held for recove
of Excise revenue due from th
said Nagappa and others

Never

Dy Secy to Govt, Law Dept

/ ☞ Address:—
EXCOMR," BANGALORE.

GOVERNMENT OF MYSORE.

EXCISE DEPARTMENT.

In reply, refer to
No. A1-102/27
Encls. ....

OFFICE OF THE EXCISE COMMISSIONER
IN MYSORE.

Bangalore, dated 18th Sept. 1928.

FROM

S.F. Rajagopalachari, Esq., B.A., B.L.,
Excise Commissioner in Mysore.

To B. Nagappa, Esq., Bar-at-Law.,
Secretary to Government of His Highness the Maharaja of Mysor
Law Department, ~~Bangalore Cantonment~~ *Bangalore.*

Subject:- No.28 of 1925-26 on the file of the District Judge, Bangalore Division (Ramanna Vs. The Deputy Commissioner, Kolar).

Sir,

With reference to your letter No.P.1482 (1)/Law 19-28-4 dated 6th September 1928 forwarding for report the notice dated 10th - August 1928 from Mr.M. Narayana Rao on behalf of his client one Mr. Venkatagiriyappa, Shanbhogue of Tubagere, claiming payment of Rs. - 3734-8-0 due on a registered hypothecation bond executed by Tubugere Nagappa, I have the honour to state that on receipt of a similar notice by the Deputy Commissioner, Kolar District, he reported to me in his letter No.C1 dated 22nd August 1928 that the properties of Tubugere Nagappa which were in the possession of Government and managed by the Amildar, Doddaballapur, had been proposed to be leased out for five years, that in view of the prior encumbrances on the properties and the decree passed in favour of the plaintiffs in Civil suit No.O.S.28 of 25-26 on the file of the District - Judge (about which I would invite reference to my letter No.A1-102/27 dated the 21st July 1928), the leasing out of the properties for a term of five years, involved some technical difficulties and - that the Government Advocate might be consulted before taking further actic

3. The Government Advocate, who represented Government in the Suit referred to, has been requested in this Office letter No. A1-102/27 dated 28th August 1928 to furnish his opinion and also a draft reply to the notice served by Mr. Narayana Rao and his reply is awaited.

4. The notice received with your letter is, herewith, returned.

I have the honour to be,
Sir,
Your most obedient servant,

J.D. Mayasona

Excise Commissioner
in Mysore.

O P I N I O N.

The decree amount is Rs.11,966 with costs and further interest. The claim of Mr. Tubegere Venkata_Iriappa is Rs.3734-8-0. The properties are expected to realise about Rs.20,000 if sold by auction and Rs.25,000 if sold in bits when there is a demand for the lands. I do not know if it is a ~~fxxxxxxxxx~~ prudent and safe thing to clear off the two prior encumbrances and then sell the land with the hope of realising at least a part of the contractor's dues to Government. The Excise Commissioner's proposal to drop the whole thing and to release the properties now in possession of Government however seems a desperate remedy.

I agree with the Government Advocate that steps may immediately be taken to arrive at an amicable settlement with the parties concerned and to make an earnest effort to see whether Government can get anything towards the amount due by the contractor. The local officers concerned may be instructed to meet the parties interested in the properties and make a report to Government on the posibility of an equitable compromise.

Legal Remembrancer.
28/11/18.